

Internal Revenue Service
Director, Exempt Organizations

Department of the Treasury
P.O. Box 2508 - Room 4122
Cincinnati, Ohio 45201

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Employer Identification Number:

Person to Contact - ID#:

Contact Telephone Numbers:

Phone
Fax

UIL 4942.03-07

LEGEND

B= State
C= Date of Incorporation
D= Country
E= Date of exemption letter
G= Agency of foreign government
H= Agency of foreign government
I= Official register of entities
J= Name of branch
c= Amount of requested set-aside

Dear

You have requested advance approval of a set-aside under the suitability test of section 4942(g)(2) of the Internal Revenue Code. You are exempt from Federal income tax under section 501(c)(3) of the Code and are classified as a private operating foundation described in sections 509(a) and 4942(j)(3) of the Code.

FACTS

You have submitted a timely request for a set-aside in the amount of \$c for the tax period ending December 31, 20 . You were incorporated in the state of B on date C, for the primary purpose of providing free medical and educational services to indigenous peoples living in a remote district in the country of D. You were determined to be exempt under section 501(c)(3) by our letter dated E.

From your formation date through December 31, 20 , you have been prevented from conducting operations of any kind in the country of D, including a project, described below, which you had approved and would otherwise have carried out in 20 . By the laws of D every foreign entity, including every charitable organization, is required to conduct its business through a branch formed under the laws of D. In addition, a foreign foundation must have its branch establish its exemption from income tax by being entered on the Register of Exempted Entities that is the charge of the G, an agency of the government of D. The application for registration must include a copy of a Certificate of Registration issued by H, the administrative entity that oversees the activities of domestic and foreign foundations and

maintains the I. If the foundation commences operations before completing all of these steps, it will be subject to a fine, and the gross revenue of the branch, including all transfers from the parent foundation, will be treated as taxable income, and program related expenses of the branch will not be deductible under the tax law of D. Furthermore, commencement of operations prior to the branch's entry on the Register may jeopardize its chances for obtaining tax exemption. For these reasons you have had to suspend the commencement of your operations pending the successful outcome of the registration process.

This process has proven unexpectedly prolonged and arduous. The government of D scrutinizes all foundations very closely due to past abuses of tax-exempt status by individuals or entities for purposes of tax evasion. You have taken timely steps to begin the process and to keep it going forward; the agencies of the government of D, however, control the timeframes in the process. You initiated the process of establishing the branch during 20 ; this was finally achieved only in July of 20 . The branch was assigned a tax identification number in August 2009. In September 20 you initiated the second step, of obtaining a Certificate of Registration from H. H has modified the information it requires on three occasions, and H has still not made its determination. The third step, registration with G as a tax exempt entity will commence immediately upon the completion of the second step.

But for the unforeseeable delay in the qualification of your branch as an Exempt Entity, you would have conducted the following program in the tax period ending December 31, 20 , with program expenditures of \$c. The project entails distributing basic educational materials (including basic educational kits for school and students, A/V equipment and instructional videos) to indigenous communities and training for the local teachers. The program will target fifteen grade schools and four high schools, with approximately students. If the branch obtains the Tax Exempt status in D in the first quarter of 20 , the entire set-aside will be expended before December 31, 20 .

LAW

Section 509(a) of the Code describes organizations exempt from federal income tax under section 501(c)(3) of the Code that are private foundations, including those subject to the private operating foundation provisions of IRC 4942(j)(3).

Section 4942(g)(1) of the Code defines "qualifying distribution" as (a) any amount paid to accomplish one or more purposes described in section 170(c)(2)(B), other than any contribution to (i) an organization controlled by the foundation or one or more disqualified persons, or (ii) a private foundation which is not an operating foundation, except as otherwise provided; (b) any amount paid to acquire an asset used directly in carrying out one or more purposes described in section 170(c)(2)(B).

Section 4942(g)(2)(A) of the Code provides that, for all taxable years beginning on or after January 1, 1975, an amount set aside for a specific

project within one or more purposes of section 170(c)(2)(B) may be treated as a qualifying distribution if the amount meets the requirements of section 4942(g)(2)(B).

Section 4942(g)(2)(B)(i) of the Code provides that an amount set aside for a specific project may be treated as a qualifying distribution if, at the time of the set-aside, the foundation establishes to the satisfaction of the Secretary the amount set aside will be paid for the specific project within five years, and the specific project is one that can better be accomplished by the set-aside of income rather than by the immediate payment of funds (the "suitability test").

Section 4942(j)(3) of the Code requires that private operating foundations must spend at least 85% of its adjusted net income or its minimum investment return, whichever is less, directly for the active conduct of its exempt activities (the income test) in order to remain a private operating foundation.

Section 53.4942(a)-3(a)(2)(iii) defines as a qualifying distribution any amount set aside within the meaning of paragraph (b) of section 3.

Section 53.4942(a)-3(b)(1) of the Foundation and Similar Excise Tax Regulations provides that the amounts of income set aside for a specific project for one or more of the purposes in section 170(c)(1) or 170(c)(2)(B) of the Code may be treated as qualifying distributions for the tax year(s) in which such amounts are set aside (but not in the tax year in which actually paid) if the requirements of section 4942(g)(2) and paragraph (b) are satisfied. The requirements of paragraph (b) are satisfied if the foundation establishes to the satisfaction of the Commissioner the amount set aside will be paid for the specific project within 60 months after it is set aside, and (i) the set-aside otherwise meets the suitability test of section 53.4942(a)-3(b)(2) or (ii) the foundation satisfies the cash distribution test.

Section 53.4942(a)-3(b)(2) of the regulations provides that the suitability test is satisfied if the private foundation establishes to the satisfaction of the Commissioner that the specific project for which the amount is set aside is one that can be better accomplished by the set-aside than by the immediate payment of funds.

Section 53.4942(a)-3(b)(7)(i) provides that a private foundation must obtain Internal Revenue Service approval of its set-aside of income under the suitability test by applying before the end of the tax year in which the amount is set aside.

Rev. Rul. 68-117, 1968-1 C.B. 251, and Rev. Rul. 68-165, 1968-1 C.B. 253, hold domestic organizations providing technical and material assistance to foreign self-help programs to be exempt under IRC 501(c)(3).

ANALYSIS

You have sought timely approval of your set-aside of income in accordance with Section 53.4942(a)-3(b)(7)(i).

As required by Section 4942(g)(2)(A) of the Code and Section 53.4942(a)-3(b)(1) of the Regulations, your project will accomplish purposes described in section 170(c)(2)(B) of the Code, namely, the relief of the poor and distressed. See Rev. Rul. 68-117 and Rev. Rul. 68-165.

You have credibly represented that the amount set-aside for this specific project will be paid out within 60 months from the set-aside, as required by section 4942(g)(2)(B)(i) of the Code and section 53.4942(a)-3(b)(1) of the regulations.

Your project is such as can better be accomplished by the set-aside of income rather than by the immediate payment of funds. Domestic charitable organizations wishing to operate in foreign countries must satisfy the legal and regulatory requirements of the host countries as well as the requirements of U.S. law. The process of obtaining all the necessary permissions may, as in the present case, prove to be prolonged, frustrating, and hampered by unpredictable problems and delays. Although you had intended to complete the project in question in 20 , you have been compelled to suspend all your charitable activities pending the registration by G of your branch as an Exempt Entity. The project has not been abandoned, but merely postponed, until you are able to carry it on lawfully in the country of D.

Your project therefore satisfies the suitability test as set forth in Section 4942(g)(2)(B)(i) of the Code and Section 53.4942(a)-3(b)(2) of the Regulations.

RULING

Based on the foregoing, the set-aside of \$c for the taxable year ending December 31, 20 , meets the requirements of Section 4942(g)(2)(B)(i) and accordingly constitutes a qualifying distribution under section 4942(g)(2).

Section 53.4942(a)-3(b)(8) of the regulations provides any set-aside approved by the Internal Revenue Service must be evidenced by the entry of a dollar amount in the books and records of a private foundation as a pledge or obligation to be paid at a future date or dates. Further, the amount of the set-aside must be taken into account in determining the foundation's minimum investment return (see section 53.4942(a)-2(c)(1) of the regulations), and any income attributable to a set-aside must be taken into account in computing adjusted net income (see section 53.4942(a)-2(d) of the regulations).

This ruling is based on the understanding there will be no material changes in the facts upon which it is based. Any changes that may have a bearing on your tax status should be reported to the Internal Revenue Service. This ruling does not address the applicability of any section of Code or

regulations to the facts submitted other than with respect to the sections described.

This ruling letter is directed only to the organizations that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Pursuant to a Power of Attorney on file in this office, a copy of this letter is being sent to the authorized representative. This ruling letter does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described.

Please keep a copy of this ruling letter in your permanent records.

If you have any questions about this ruling, please contact the persons whose name and telephone number are shown above in the heading of this letter.

Sincerely yours,

Robert S. Choi
Director, Exempt Organizations
Rulings & Agreements

Enclosures: Notice 437, Redacted Copy of Letter